

REMARKS

In the office action of April 7, 2006, the Examiner elected to withdraw the final rejection, and thus obviate the appeal brief that Applicants filed in this case. After withdrawing the final rejection, the Examiner issued new Section 103 rejections. In these rejections, the Examiner replaced the secondary reference of Corwin, set forth in the final office action, with a new secondary reference, the patent to Boyadjian, U.S. Patent No. 6,105,332. All of the rejections include the secondary Boyadjian reference.

In setting forth the 103 rejections, the Patent Office acknowledges that the primary references do not include the triangular shaped spikes cut from the claimed plate. Accordingly, the Examiner has relied on the Boyadjian reference to show the triangular shaped spikes. In all cases, it appears that the proffered motivation for incorporating Boyadjian is to temporarily or partially secure the brick tie to a wall structure.

First, the Boyadjian is non-analogous art. Without question the Boyadjian reference has nothing whatsoever to do with brick ties. That will not be disputed by the Patent Office. In addition, it is not reasonably related to the problem confronted by Applicants in this case. The problem confronted by Applicants in this case is that of designing a brick tie that is interconnected between a wall structure and a brick veneer wall to prevent the brick veneer wall from falling or crumbling. Boyadjian, on the other hand, relates to a simple anchoring plate used to anchor an anchor bolt in a foundation. Boyadjian addresses a problem of being able to precisely align the anchoring plate with an opening in the sill overlying the foundation. Boyadjian has nothing to do with brick ties, securing brick ties to a brick wall, or securing the brick ties to an inner wall. The general problems faced by a brick tie designer are not found in designing anchor plates to secure anchor bolts to foundations. In the field of construction, an anchor plate for tying down an anchor bolt is about as far removed from a brick tie as any two construction components found in the field.

Furthermore, the Patent Office has not made out a prima facie case of obviousness. In each case, the Examiner has relied on the idea that a person of ordinary skill in the art would be motivated to utilize the spike of Boyadjian to temporarily or partially secure the brick wall to an interior wall of a structure. There is no factual support for this motivation. There is no evidence that suggests that being able to temporarily or partially secure a brick tie to an interior wall is of any advantage. Indeed, there is no indication in the record that there is a need to temporarily or partially secure brick ties to a wall structure.

The placement of brick ties in a wall structure does not require precise placement. There is a range of appropriate vertical positions, for example, where a brick tie can be appropriately placed. Because there is a lack of necessity for precise placement, the brick ties of the primary references may be easily mounted, either to a predetermined point prior to building the brick veneer wall, or in the course of laying the bricks. Holding the brick tie at an appropriate vertical position opposite the known location of a stud while inserting fasteners is a trivial operation that framers or masons easily accomplish.

In some cases, such as in the Hohmann reference and in the Allan reference, for example, the insulation panels (see insulation panels 26 in Hohmann) form a ledge that permits the brick ties to rest thereon, even before being secured to the adjacent wall structure. Thus, in the case of the Hohmann reference for example, as the brick wall is built up, the insulation panels 26 may be placed one over the other during the course of building the brick wall. In this case, the upper ledge of each panel 26 temporarily provides a ledge upon which each bent plate 40 can rest. Thus, in this case, even if it were desired to temporarily support the plate 40, the upper ledge of the insulation panels would provide that support.

It would be highly unusual to design a brick tie that is not compatible with a sheetrock or a wall that includes a drywall component. For example, in the Hohmann patent, note drywall 32. Drywall, sometimes referred to as gypsum board, is composed of a rather dense and brittle

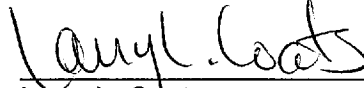
inner layer of gypsum or plaster-like material sandwiched between two layers of heavy paper such that a relatively rigid and stiff panel is formed. Some panels are commonly used to provide the flat and smooth surface of a wall, and Hohmann, for example, teaches its use in this manner. However, it is well known to those skilled in the art that drywall or gypsum board is easily broken when subjected to sharp impact. Indeed, these panels are not designed to hold nails or screws without some kind of special pre-drilling and lining. Further, driving a spike or wedge into such a panel, particularly one backed by a solid backing such as a metal wall stud, will result in cracking and otherwise fracturing the inner gypsum layer such that the holding power of such a spike or wedge would be inadequate for any practical purpose. A person of ordinary skill in the art would not design a brick tie that was not compatible with drywall. For this reason alone, the Patent Office's motivation to combine is flawed and unsupported.

In addition, portions of the brick tie that are secured to the wall structure have to be fairly robust because of significant overhanging loads resulting from being tied to the brick wall. In the case of the brick ties of the primary reference, the structure of the brick ties would be relatively thick to support these loads. With the structure of the brick ties being fairly thick and strong, it would be difficult to punch or press triangular spiked openings from such structures. Indeed, it would be expensive, time consuming, and costly to do so. This too would disway a person of ordinary skill in the art from modifying the primary references as argued by the Patent Office.

In the end, there is nothing to be gained from modifying the primary references by providing triangular spikes. Contrary to the Patent Office's position in this case, there is nothing in the record that suggests any deficiency in brick ties with respect to a need to temporarily or partially attach them to a wall prior to a permanent fastener being secured through the brick tie and into the wall. The proffered motivation in this case is inspired only by hindsight, and hence, a prima facie case of obviousness has not been made out.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.

A handwritten signature in cursive script, reading "Larry L. Coats", written over a horizontal line.

Larry L. Coats

Registration No.: 25,620

Dated: September 7, 2006

P.O. Box 5
Raleigh, NC 27602
Telephone: (919) 854-1844
Facsimile: (919) 854-2084